

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**FRANK CAPPuccio, et al.,**

Plaintiffs,

v.

**STATE FARM FIRE & CASUALTY  
INSURANCE COMPANY,**

Defendant.

**CIVIL ACTION**

**NO. 19-3025-KSM**

**ORDER**

**AND NOW**, this 8th day of May, 2020, upon consideration of State Farm's Motion to Dismiss Count II (Doc. No. 6) and the Cappuccios' response brief (Doc. No. 8), and for the reasons set forth in the Memorandum, it is **ORDERED** that:

- (1) The Motion to Dismiss Count II (Doc. No. 6) is **GRANTED**.
- (2) Count II is **DISMISSED WITHOUT PREJUDICE**.
- (3) **By May 28, 2020**, Plaintiffs may, consistent with the Memorandum, file an amended complaint reasserting his claims with additional factual allegations to support Count II. If Plaintiffs fail to timely file an amended complaint, the case will proceed on Count I of the Complaint, *see* Doc. No. 1.

/s/**KAREN SPENCER MARSTON**

\_\_\_\_\_  
KAREN SPENCER MARSTON, J.